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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SENECA INSURANCE COMPANY, Defendant and Appellant.	G051890 (Super. Ct. No. 13HF1630) O P I N I O N

Appeal from a judgment and order of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

E. Alan Nunez; John M. Rorabaugh for Defendant and Appellant.

Leon J. Page, County Counsel, and Suzanne E. Shoai, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Appellant and surety Seneca Insurance Company (Seneca) appeals from the denial of its motion to set aside summary judgment, discharge forfeiture and exonerate a bail bond. Seneca contends it was entitled to relief under Penal Code[1] section 1305.6 or alternatively, section 1305(e). We disagree and affirm the judgment.

FACTS

In April 2014, the court set bail at $100,000 for defendant Titus Young. Seneca posted a bail bond in that amount ($100K bond) on defendant's behalf through its agent Iron Bail Bonds (Iron).

Defendant failed to appear in court on July 10, 2014. The court ordered the $100K bond forfeited, increased defendant's bail to $500,000, and issued a bench warrant for his arrest. The next day, the deputy clerk mailed a notice of forfeiture to Seneca and Iron.

In August or September 2014, it was discovered defendant was in custody in Los Angeles and the Orange County court was notified. On September 18, Orange County Central Warrant Repository served a warrant as a hold on defendant.

The exoneration period expired on January 12, 2015. No request for exoneration was made before that date. On January 21, 2015, a $500,000 bail bond was posted by another surety and defendant's status was updated to show he was released on bail. Defendant ultimately appeared in court and pleaded guilty. The trial court sentenced him to three years' probation.

On January 27, the court entered summary judgment on the $100K bond, and served notice of its entry to Iron and Seneca on February 6. Twelve days later, Seneca filed a motion (Motion) to set aside the summary judgment, discharge the

[1] All further statutory references are to this code. The word "subdivision" shall be omitted when immediately prefaced by a statute. Its shortened form of "subd." shall also be omitted.

forfeiture and exonerate the $100K bond, contending good cause under section 1305.6(b) existed. Seneca supported the Motion with the declaration of Teri King,[2] the owner of King Bail Bond Agency (King), who explained that Iron was actually King's posting agent which had posted the $100K bond on King's behalf.

Teri also described the reasons she had not discovered the bail forfeiture earlier: King is a small, family-run business and when her brother died in March 2014, her niece, the office manager, took an extended leave of absence in June 2014, leaving Teri to handle all bail-related matters. Teri was not served with the notice of forfeiture of the $100K bond and Iron did not forward it to her.

In August or September 2014, defendant's mother informed Teri that defendant had been arrested and taken into custody in Los Angeles County. Defendant was represented by counsel and Teri believed the Orange County and Los Angeles County cases would be handled together or that defendant would be transferred to Orange County. After speaking with defendant's mother, Teri left a message with the Orange County clerk's office that defendant was in custody in Los Angeles. Defendant's mother did not advise Teri the bond had been forfeited and Teri remained unaware of that fact.

In late October, a part-time employee at King who "handles weekly sign-ins for those who are out on bail, and for those who miss the weekly sign-ins, . . . checks the jail to see if they're in custody," "checked to see if the defendant was in custody." The employee printed out a Los Angeles County Sheriff's Department inmate information sheet "show[ing] an out of county hold on defendant with a '$0' bail amount, associated with Orange County Case No. 13HF1630. [Teri] believed that it was a removal order rather than a warrant because it had a $0 bail amount . . . . In [her] experience, defendants are generally transported back to custody within a short period of

[2] In order to differentiate Teri King from her bond company, she will be referred to by her first name.

the hold being placed in outlying counties. Since [she] was unaware of the forfeiture of [the $100K bond], [she] did not schedule a motion for this bond."

With the exoneration period about to expire on January 12, 2015, Seneca's managing general agent (BAIL USA) twice e-mailed Teri at her previous e-mail address (on December 22, 2014 & January 8, 2015), notifying her of the forfeited bond. After the court entered summary judgment on the bond on January 27, BAIL USA e-mailed her the next day and again on February 4, two days before notice of entry was served. But Teri was using her Google e-mail (Gmail) address at the time and did not receive those e-mails.

The notice of entry of summary judgment and demand for payment was not sent to King and Teri only discovered the $100K bond had been forfeited when she received a voicemail on February 6, 2015 and a follow-up e-mail sent to her Gmail address. Upon learning summary judgment had been entered, Teri discovered BAIL USA had also been sending e-mails to her niece/office manager, which had not been checked due to her medical leave.

After taking the matter under submission following the parties' arguments, the trial court denied the Motion. Seneca appeals.

DISCUSSION

1. Section 1305.6

Seneca contends the trial court erred by denying its motion to set aside the forfeiture under section 1305.6. We disagree.

"The bail forfeiture statute provides that when a criminal defendant for whom bail has been posted fails to appear, the trial court shall declare in open court that the undertaking of bail is forfeited. [Citation.] Thereafter, the surety that posted the bond has a 185-day [180 days plus 5 days for mailing] statutory period (sometimes called the exoneration or appearance period) in which to produce the defendant in the court where the case is located and have the forfeiture set aside. [Citation.] [¶] . . . [¶] As an

alternative to producing the defendant in the court where the case is pending, the surety may attempt to demonstrate other circumstances requiring the court to vacate the forfeiture." (*People v. Accredited Surety Casualty Co.* (2014) 230 Cal.App.4th 548, 556 (*Accredited*).)

Seneca sought relief from forfeiture under section 1305.6, which provides: "(a) If a person appears in court after the end of the 180-day period specified in Section 1305, the court may, in its discretion, vacate the forfeiture and exonerate the bond if both of the following conditions are met: [¶] (1) The person was arrested on the same case within the county where the case is located, within the 180-day period. [¶] (2) The person has been in continuous custody from the time of his or her arrest until the court appearance on that case. [¶] (b) Upon a showing of good cause, a motion brought pursuant to paragraph (3) of subdivision (c) of Section 1305 may be filed within 20 days from the mailing of the notice of entry of judgment under Section 1306."

"[T]he appropriate test for good cause contains an objective component (i.e., reasonableness) and subjective good faith component. In determining whether a surety acted reasonably and in good faith, courts must consider the totality of the circumstances and evaluate the reasons given by the surety for not filing a motion within the 185-day appearance period." (*Accredited*, *supra*, 230 Cal.App.4th at p. 551.) "'Ordinarily, appellate courts review an order denying a motion to vacate the forfeiture of a bail bond under an abuse of discretion standard.'" (*Id.* at p. 555.) "In reviewing a court's determination of good cause, we apply the abuse of discretion standard." (*People v. Ranger Ins. Co.* (2007) 150 Cal.App.4th 638, 644; *People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 80.)

During oral argument, Seneca agreed the applicable standard of review is abuse of discretion. In reviewing any order or judgment we start with the presumption that the judgment or order is correct, and if the record is silent we indulge all reasonable inferences in support of the judgment or order. (*Yield Dynamics, Inc. v. TEA Systems*

Corp. (2007) 154 Cal.App.4th 547, 556-557].) "The trial court can only be said to have abused its discretion where its decision '"'exceeds the bounds of reason, all circumstances being considered. [Citation.]'"'" (*People v. Seneca Ins. Co., supra,* 116 Cal.App.4th at p. 80.)

a. Failure to Exercise Discretion

Preliminarily, we address Seneca' claims made during oral argument that the trial court abused its discretion by failing to exercise it. The contention lacks merit.

At the hearing on Seneca's Motion, the trial court noted Seneca's written Motion relied almost exclusively on section 1305.6(b), without mention of section 1305.6(a). Seneca's counsel conceded he was relying on subdivision (b). But before reaching section 1305.6(b), the court noted the discretionary nature of section 1305(a)—"[i]t permits the [c]our to vacate a bond . . . forfeiture . . . and to exonerate the bond even after expiration of the 180 period . . . if two specific conditions are met. [¶] The first such condition is that the [d]efendant has been arrested on the same case, in the same county, within a 180[-day] period, and he's been in continuous custody thereafter. That's not this case." The court also recited the two requirements of section 1305.6(a) in its minute order denying the Motion before concluding "that neither of the exceptions of [section] 1305.6 has been shown by [Seneca] to have been met . . . ." Seneca itself recognized the court had considered section 1305.6(a) by asserting the court had "misread and misapplied" it by misquoting it.

As to section 1305.6(b), the court recited the facts relied upon by Seneca and summarized Seneca's position. The parties and the court then discussed whether Teri's declaration provided good cause for the trial court to allow a motion to be brought under section 1305(c)(3). The court took the matter under submission and subsequently denied the Motion in a minute order, stating: "Seneca's proffered reasons for the instant [M]otion are solely grounded on allegedly exculpatory nonfeasance of its own agent, King . . . as recited by the declaration [of] its president. King . . . is not a party to the

instant [M]otion, its actions as agent would be attributable to the moving defendant, and the instant [M]otion does not extend to the court ruling on intramural disputes between principal and agent."

Although the court's ruling did not expressly find good cause had not been shown, its denial of the Motion necessarily implies it. On appeal "'the judgment as entered should be liberally construed with a view of giving effect to the manifest intent of the court.'" (*People v. Landon White Bail Bonds* (1991) 234 Cal.App.3d 66, 77.) The manifest intention of the court here was to deny Seneca's Motion. Liberally construing the order along with the arguments made at the hearing, we conclude that the court's failure to specifically use the words "good cause" did not mean the court did not exercise its discretion.

We turn now to Seneca's arguments made in its opening brief.

b. Compliance with Section 1305.6

Seneca first argues it satisfied section 1305.6(a) because defendant was arrested in the Orange County case when a hold was placed on him while he was in the custody of Los Angeles County. Seneca is correct that section 1305(i) provides the term "'arrest'" includes "a hold placed on the defendant in the underlying case while he or she is in custody on other charges." But defendant was not arrested in Orange County, "the county where the case is located." (§ 1305.6(a)(1).) He was arrested in Los Angeles County.

Seneca maintains that section 1305.6(a)'s phrase "arrested on the same case within the county where the case is located" does not require defendant to be "arrested within the county where he is wanted; it means that the *case* is the one pending within the county where he is wanted. This has to be so, because if he is arrested 'within the

county,' section 1305(c)(3)[3] would not apply, since it pertains only to instances where defendant is found 'outside the county where the case is located.' Moreover, section 1305.6 itself clearly states that it relates to 'paragraph (3) of subdivision (c) of Section 1305.'"

But section 1305(c)(3) is mentioned only in connection with subdivision (b) of section 1305.6, not subdivision (a). "The Legislature's omission of this language in subdivision [(a)] precludes us from adding such a requirement." (*People v. Accredited Surety & Casualty Co., Inc.* (2012) 203 Cal.App.4th 1490, 1501 (*Accredited II*).) Section 1305.6(a) gives a trial court discretion to vacate the forfeiture and exonerate the bond if both subsections (1) and (2) are shown; it does not mention section 1305(c)(3). Subdivision (b) on the other hand allows a motion to be brought for good cause under section 1305(c)(3) within a certain time frame.

Ultimately, it does not matter whether Seneca demonstrated compliance with section 1305.6(a) because the court had discretion to decide whether to vacate the forfeiture and exonerate the bond even if the two conditions were met. Seneca has not shown the court exceeded the bounds of reason in exercising its discretion in the manner it did.

Seneca next contends Teri's declaration showed the necessary good cause for relief under section 1305.6(b). It explains that under *Accredited*, *supra*, 230 Cal.App.4th at page 560, "good cause [under section 1305.6(b)] contains an objective component (i.e., reasonable grounds) and a subjective component (i.e., good faith)." (Fn. omitted.) Additionally good faith is inferred if "[t]here are no facts in the record that suggest the bail agent was acting dishonestly or attempting to mislead anyone when he

[3] Section 1305(c)(3) provides, "If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail."

did not file a motion to vacate the forfeiture during the appearance period." (*Id*. at p. 563.)

According to Seneca, there are no facts here that King acted dishonestly or attempted to mislead anyone by not filing a motion, and it was reasonable, and even an excusable neglect, [to] not file a motion when she was unaware that the bond in the Orange County case had been declared forfeited." That may be sufficient to meet the subjective good faith aspect of good cause under section 1305.6(b). To that end, the county has admitted "[t]here's no issue about good faith."

But Seneca has not shown its actions were reasonable, i.e., that it met the objective component of good cause under section 1305.6(b). It merely asserts it was reasonable, and even excusable neglect, not to file a motion when she was not aware that the bond in the Orange County case had been forfeited. We are not persuaded.

In *Accredited*, *supra*, 230 Cal.App.4th 548, bail was forfeited when the defendant failed to appear in Fresno County Superior Court. The bail agent subsequently learned the defendant had been arrested in Sacramento County and that a hold had been placed in the Fresno case. But he decided not to file a motion to set aside the forfeiture because in his experience, he believed the defendant would be returned to Fresno after the completion of his Sacramento case. During the exoneration period, the bail agent made several calls to the Fresno County court clerk but was unable to obtain information regarding the defendant's status or that of the bond. Although the bail agent then went to the clerk's office, he was told the defendant's file could not be located. The clerk, however, printed out a minute order for him showing a bail bond had been exonerated. When the bail agent learned the exoneration related to a different bond, he returned to the court to inquire about the correct bond but the clerk's office told him the defendant's file could not be located. Over the next two weeks, the bail agent followed up with the clerk's office but was told the status of the bond could not be determined until the file was found. (*Id*. at p. 553.) The day after the trial court entered summary judgment on the

bond, the bail agent discovered the defendant's file had been located and the bond had not been exonerated. (*Id*. at p. 554.)

The surety moved to set aside the summary judgment on the bond but the trial court denied the motion. (*Accredited, supra,* 230 Cal.App.4th at p. 554.) The appellate court affirmed because the record contained too many "gap[s]" in evidence for it to conclude the bail agent had acted reasonably. (*Id*. at p.563.) The bail agent provided no basis for his belief Sacramento County would return the defendant within the 185-day exoneration period or to Fresno County instead of other counties where the defendant had outstanding warrants. (*Id.* at pp. 552, 563-564.) There was also the lack of "factual information about the bail agent's particular experiences" so as to be able to support his belief. (*Id*. at p 563-564.) Nor could the court evaluate whether the bail agent acted reasonably in relying on the minute order stating a bond had been exonerated because the minute order was not included in the record on appeal. The court was not convinced by the surety's contention "the bail agent had 'no way' of determining whether Bond #044 had been exonerated because the file had been misplaced by the clerk's office." (*Id*. at p. 565.) "Surety has not explained why the bail agent believed Bond #044 might have been exonerated in the first place. It appears unlikely the that the bond would have been exonerated without a motion or an appearance in court by [the defendant]. The bail agent knew he had not filed a motion and could have obtained information about the location of [the defendant] from the Sacramento County inmate information system or the Fresno County Sheriff's Department. Why these potential sources of information were not used by the bail agent is not explained in the declaration." (*Id.* at p. 565.)

Although Seneca distinguishes *Accredited* from this case on the basis the bail agent there "had actual notice of the forfeiture" (bold and italics omitted), a similar absence of explanation in this case precludes us from concluding Seneca acted reasonably through Teri. As in *Accredited*, Teri's declaration provided no factual basis for her beliefs (1) the Orange County case would be handled together with the Los Angeles

County case, (2) the printout showing a zero bail amount constituted a removal order rather than a warrant, (3) defendants were generally transported back to custody in the original county after a hold was placed on them in another county. Although she attested that since 2014, King was operated by her brother, her niece, and herself, and then solely by her after June 2014 following the death of her brother and the extended leave taken by her niece, her declaration provides no other facts as to her experience in the bail bond industry other than this one-year period.

Also missing from Teri's declaration is any justification for her failures to monitor the court's docket in defendant's case, provide the court with her contact information given her undertaking of bail bond duties while knowing the bond had been posted by another agent, require Iron to immediately forward notices regarding forfeitures, update Seneca with current contact information so it could do the same, or check her previous e-mail address or that of her staff out on leave. Nor does Teri's declaration contain information as to why Seneca's managing general agent, BAIL USA, could not have left her a voicemail before the date notice of entry was served (February 6, 2015) or how it was that it suddenly managed to send a follow-up e-mail to her current Gmail account.

Given the lack of information contained in Teri's declarations and the omissions on the part of Seneca's agents, Teri and BAIL USA, the actions of which are imputed to Seneca, the trial court did not abuse its discretion in denying Seneca's Motion.

2. Section 1305(*e*)

Seneca also asserts it is entitled to relief under section 1305(e), which allows a tolling of the 180-day period based on a showing of a temporary disability, provided that certain conditions are met. According to Seneca, the trial court should have tolled the 180-day period under section 1305(e), such that the 180-day period did not run until May 12, 2015, 111 days after defendant appeared in court on January 21, 2015. We disagree.

As the county notes, section 1305(e) "does not require the trial court to act on its own motion, nor does it provide for tolling by operation by law." (*Accredited II, supra*, 203 Cal.App.4th at p. 1496.) Thus, Seneca "was required to file a motion pursuant to subdivision (e) before the expiration of the exoneration period." (*Id*. at p. 1502.) Because Seneca failed to so, it was not entitled to relief under that subdivision.

DISPOSITION

The judgment and order denying Seneca's Motion to set aside summary judgment, discharge the bail forfeiture and exonerate the $100K bond are affirmed. Respondent shall recover its costs on appeal.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.